

**International Union of Operating Engineers, Local
675, AFL-CIO (Sims Crane Service, Inc.) and
Huey E. Nance. Case 12-CB-2503**

26 June 1984

DECISION AND ORDER

**BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS**

On 26 September 1983 Administrative Law Judge Leonard N. Cohen issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed limited cross-exceptions as well as a supporting brief. The Respondent also filed an answering brief to the General Counsel's cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as set forth in full below.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified, and orders that the Respondent, International Union of Operating Engineers, Local 675, AFL-CIO, Pompano Beach, Florida, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Coercing or restraining Sims Crane Service, Inc. to remove Huey E. Nance from the position of craft foreman.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In the absence of exceptions, we adopt the judge's dismissal of the 8(b)(1)(A) allegations.

² In addition to notifying the Employer that it does not object to Huey Nance's reinstatement to the craft foreman position, as required under the judge's recommended remedy and Order. The Respondent shall be required to affirmatively request of the Employer that he be reinstated. The Respondent shall also be liable for any loss of wages and benefits Nance may have suffered by reason of its unlawful conduct until such time as Nance is reinstated to his former or substantially equivalent position or obtains substantially equivalent employment elsewhere. See *Sheet Metal Workers Local 355 (Zinsco Electrical)*, 254 NLRB 773, 774 (1981).

The judge's recommended Order shall further be modified to include a provision requiring the Respondent to expunge from its records any reference to Nance's unlawful removal from the craft foreman position. *R. H. Macy & Co.*, 266 NLRB 858, 861 fn. 19 (1983). Also, par. 1(b), L. 2 of the judge's recommended Order should read "or any other employee" rather than "or any other employees." We shall accordingly correct this inadvertent error.

(b) In any like or related manner restraining or coercing Sims Crane Service, Inc. or any other employer in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Immediately notify Huey E. Nance and Sims Crane Service, Inc. in writing that it has no objection to the reemployment of Huey Nance as craft foreman or in any other supervisory position and that it will not restrain or coerce said employer to remove him from such position.

(b) Immediately request, in writing, that Sims Crane Service, Inc. reinstate Nance to his former position of craft foreman or to a substantially equivalent position of employment.

(c) Make Huey Nance whole for any loss of wages or benefits suffered by reason of the Respondent's unlawful conduct until such time as Nance is reinstated to his former or substantially equivalent position or until Nance obtains substantially equivalent employment elsewhere. Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Expunge from its records any reference to the unlawful removal of Huey Nance from his position of craft foreman and notify him, in writing, that this has been done and that evidence of his unlawful removal shall not be used as a basis for future action against him.

(f) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Union has taken to comply.

APPENDIX

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT coerce or restrain Sims Crane Service, Inc. to remove Huey E. Nance as craft foreman.

WE WILL NOT in any like or related manner restrain or coerce Sims Crane Service, Inc. or any other employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

WE WILL notify Huey Nance and the Employer, Sims Crane Service, Inc., in writing, that we do not object to Nance's reinstatement to the craft foreman position or to any other supervisory position and shall ask Sims Crane Service, Inc. to reinstate Nance to his former or substantially equivalent position.

WE WILL make Huey Nance whole for any loss of wages or benefits, with interest, that he may have suffered by reason of our unlawful conduct in removing him from the craft foreman position, until such time as Nance is reinstated to his former or substantially equivalent position or until Nance obtains substantially equivalent employment elsewhere.

We will expunge from our files any reference to the unlawful removal of Huey Nance from the craft foreman position and shall notify him, in writing, that this has been done and that evidence of this unlawful removal will not be used as a basis for future action against him.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 675, AFL-CIO

DECISION

STATEMENT OF THE CASE

LEONARD N. COHEN, Administrative Law Judge. This case was tried before me on June 30, 1983, in Miami, Florida. Pursuant to a charge filed on March 18, 1983, by Huey E. Nance, an individual, a complaint was issued

on April 28, 1983, by the Regional Director for Region 12 of the National Labor Relations Board. The complaint alleges that the Respondent, International Union of Operating Engineers, Local 675, AFL-CIO, violated Section 8(b)(1)(A) and (B) of the Act by replacing Nance as craft foreman while he was employed by Sims Crane Service, Inc.

All parties were afforded full opportunity to participate, to present relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file written briefs. Both counsel filed posthearing briefs which have been carefully considered. From the entire record in this case and from my observation of the demeanor of witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Sims Crane Service, Inc. (Sims) is a Florida corporation with an office and place of business in Pompano Beach, Florida, where it is engaged in the business of leasing and selling cranes. During the past calendar year ending December 31, 1982, Sims provided services valued in excess of \$50,000 to a Florida corporation engaged in the construction industry which in turn purchased and received at its Miami, Florida facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Florida. Respondent admits and I find and conclude that Sims is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits and I find and conclude that it is now and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. CONTENTIONS OF THE PARTIES

The General Counsel alleges that Nance, a member of Respondent, was a statutory supervisor and representative of his employer Sims for the purpose of collective bargaining or the adjustment of grievances. He further alleges that because of Nance's opposition to the reelection of Respondent's business manager Dennis Walton, Walton replaced Nance as craft foreman. This removal, he argues, not only restrained and coerced Sims in violation of Section 8(b)(1)(B) but also coercively impacted on unit employees/members in violation of Section 8(b)(1)(A).

While Respondent on brief concedes that Nance was in fact a statutory supervisor, she argues that Nance cannot be considered as a representative of Sims within the purview of Section 8(b)(1)(B). Further, Respondent contends that in any event Sims, and not Respondent, was responsible for Nance's being replaced as craft foreman. Further, she argues that in no event can Respondent's treatment of Nance, a statutory supervisor, be found to violate Section 8(b)(1)(A).

IV. THE UNFAIR LABOR PRACTICES

A. *Uncontested Background Evidence*

In August or September 1979, Nance was dispatched by Respondent through its hiring hall to Allied Power Crane, a subsidiary of Sims, where he worked as a crane operator until February 1980.¹ In early 1980, Dennis Walton, Respondent's business manager, asked Nance if he was interested in working for Sims at its Pompano Beach yard as an assistant craft foreman. Nance agreed and apparently immediately thereafter, Nance was shifted over to Sims to work in the assistant craft foreman capacity.² In late 1980, when Sims' craft foreman Robert Sheely was made part of management, Walton asked if Nance was interested in moving into Sheely's position. Nance indicated that he was and again almost immediately thereafter Nance was promoted to the craft foreman position where he remained until September 23, 1982.

As craft foreman, Nance was directly responsible for overseeing virtually all facets of the employment of the approximately 40 to 60 crane operators and oilers who may have been employed by Sims at various south Florida construction sites at any given time. While stationed at Sims' Pompano Beach yard, Nance spent considerable amount of his time traveling to and visiting with crane operators and oilers at these construction sites. His duties, which were set forth in the most current collective-bargaining agreement which was executed in June 1982 and covers the period June 1, 1982, through May 31, 1983, included: assigning operators and oilers to particular cranes at particular locations and generally directing them in the performance of their work, preparing monthly safety reports, keeping time records, and being responsible for assuring that Sims employed the appropriate number and type of operators and oilers for each job on hand. In this latter regard, Nance on being informed by Sims' dispatcher as to the number of cranes that would be needed for the next day's work would, on a daily basis, either notify employees that they would no longer be needed or call the hiring hall and request additional help. On many occasions, Nance, knowing the abilities of the crane operators working out of this local, would "name" request employees from Respondent's out-of-work list. In carrying out all of these duties, including the selection of those employees to be laid off, Nance operated without prior approval of the branch manager, his immediate supervisor.³

In his official capacity as craft foreman, Nance neither participated in the collective-bargaining negotiations nor signed any agreements on behalf of Respondent. Nance did, however, deal directly with the Union on Sims' behalf. These contacts were on two different levels, one

with Respondent's shop steward Rene Lopez at the yard and/or construction sites and two with Walton at the union hall. In regard to the first, on several separate occasions Lopez complained to him about the operators having to work in the rain without appropriate rain gear. Nance rejected Lopez' request that the men be issued rain gear and instead, on his own, simply instructed the men not to work in the rain. Lopez also complained to him on four to five other occasions about allegedly unsafe equipment. One each of those occasions, Nance, again on his own, instructed the chief mechanic to check out the complaints and fix the problem if necessary. The final complaint lodged with him by Lopez involved the poor quality of drinking water supplied to the employees at the Sims' yard. Nance simply instructed Lopez to send a man out every morning while on the clock to get the needed ice and/or drinking water.

During Nance's term as craft foreman he was instructed by the branch manager on approximately six different occasions to go to the union hall and seek permission from Walton or the other assistant business agents for permission for Sims to operate in noncompliance with strict requirements of the collective-bargaining agreement. On only one such occasion did Walton grant the requested variance. While Nance did not participate in the processing of any formal grievance, the record does not disclose whether any such formal grievances had been filed during Nance's term as craft foreman.

On the evening of July 8, Respondent convened a special membership meeting for the purpose of nominating officers for the upcoming year. Two different slates of candidates were nominated. One headed by Walton, the incumbent business manager, and one headed by Gus Chandler, a Sims employee working out of Sims' headquarters in Tampa, Florida. Nance was nominated as a candidate for the trustee position on Chandler slate.

On August 14, the election was held. Walton was re-elected by a margin of only some 27 votes out of approximately 1200 to 1300 votes cast. Nance was also elected as trustee. Apart from Walton himself, only one other candidate from Walton's slate was elected.

B. *Events Leading to Nance's Replacement as Craft Foreman*1. *The General Counsel's evidence*

Thomas Sims Sr., chairman of the board of Sims, testified that about September 22, after O'Duggan had already been replaced by Burt Kolleda as the Pompano Beach branch manager,⁴ he made a trip from Tampa to Pompano Beach for the purpose of meeting with Walton. He met with Walton and Walton's assistant business manager Joe Gagne at the union hall in the morning. After pleasantries were exchanged Sims told Walton and Gagne that he wanted to make peace with Walton. Sims Sr. explained that a lot of people who had been opposing Walton's reelection including Gus Chandler worked for Sims and that his company had somehow gotten in-

¹ For many years Respondent and Sims have been parties to a series of collective-bargaining agreements which provide, inter alia, for the operation of an exclusive hiring hall.

² The subject of selection and replacement of craft foreman and assistant craft foreman as well as their duties, will be discussed infra.

³ From the time Nance assumed the position of the craft foreman until late spring of 1982, Robert Sheely was employed as Pompano Beach branch manager. In the late spring or early summer of 1982, Sheely was replaced by Terrence O'Duggan who was in turn replaced in mid-September by Burt Kolleda.

⁴ O'Duggan's last day was Friday, September 17. Kolleda started work on the following Monday.

volved in the election because Chandler bumper stickers had been placed on all his equipment. Sims added that, even though he had instructed his people not to do this, there seemed to be a little feud developing between himself and Walton because it had been done,⁵ and that straightening out that situation was the purpose for his trip.

Walton then asked if Chandler was still working for Sims. When Sims Sr. acknowledged that he was, Walton responded that he should keep that "s.o.b." in the Tampa area. Walton then added that he was going to replace Nance as craft foreman. In response, Sims Sr. merely commented that Nance had done a good job for Sims. At hearing, Sims Sr. explained that he did not protest or pursue Walton's pronouncement further since those types of personnel decisions were matters solely within the area of responsibility of his son Thomas Sims Jr. and that a meeting between Sims Jr., Walton, and Burt Kolleda, the new branch manager, was scheduled to take place that same afternoon.

Later that day, the meeting took place as scheduled at the union hall.⁶ After Sims Jr. and Kolleda were introduced and shown around, they went into Walton's office and had the following conversation. Walton stated that he was not happy with the people who had run against him. He specifically referred to Chandler and repeated to Sims Jr. what he had earlier told Sims Sr. about keeping Chandler in the Tampa area. Walton next brought up the subject of Nance. He stated that he had decided to replace Nance as craft foreman. Kolleda responded by stating that while he did not know Nance well, he seemed to be doing a good job. Kolleda added that Nance knew all the customers and he would like to see Nance remain at least long enough for him to familiarize himself with both the customers and the terrain. Walton responded that he could not since Nance did not share his "political philosophy." Walton stated that he, as business manager of Respondent, had the authority and the discretion under the collective-bargaining agreement and Respondent's bylaws to appoint and/or replace craft foremen and that the Company had nothing to say or do about it.⁷

⁵ Sims Sr. did not explain the meaning of his reference to "a little feud developing" between himself and Walton.

⁶ The following account is based on a composite of the basically mutually corroborative testimony of Sims Jr. and Kolleda. Their respective testimony differs in only one material respect, i.e., whether the individual who was going to replace Nance as craft foreman was identified by name.

⁷ The collective-bargaining agreement does not specify as to how the selection of craft foremen is made. It only provides that when an employer employs a given number of operating engineers, the employer shall employ a craft foreman and if that number increases further to another specified level, it shall employ an assistant craft foreman. Respondent's bylaws do, however, specifically provide that the business manager "shall appoint all foreman and stewards."

Sims Jr. testified that it was always his understanding that Respondent had the right to name and replace craft foremen and that this understanding controlled the manner in which Sims operated in the Nance affair.

Respondent, on the other hand, contends that the selection of craft foremen is a mutual decision between the employer and the Union. In view of the manner in which Walton asserted his authority to replace Nance and the manner in which Sims choose to accede to such an assertion, I need not resolve the legal question of whether the selection process was a matter exclusively left to the business manager or was a matter for "mutual agreement."

Walton then added that he had someone already in mind to replace Nance. According to Sims Jr., Walton identified this individual by name as Don Moylan, a former craft foreman for B & W Crane Service, a company run by Walton's brother. According to Kolleda, Walton never specifically identified the individual to whom he was referring.

The following day Nance was given a message by a secretary at Sims' yard to call Walton. When he reached Walton about noon on Thursday, September 23, Walton asked him to come in the following morning. Nance indicated that he could not make it then but could stop by the union hall after work that afternoon. Walton agreed to meet Nance at 5:30 p.m. on September 23 at the union hall.

Shortly after his phone conversation with Walton, Nance arrived at the Sims office at the Pompano Beach yard. When he got there Sims Jr. met him in the hallway and told him that he was being replaced as craft foreman by Dennis Walton. When Nance asked why, Sims Jr. answered that it was because of his "political philosophy" which was different than Walton's. Nance told Sims that Walton could not do that legally. Sims Jr. merely responded that he had done it.

At 5:30 that same afternoon, Walton and Nance met in the union office. At the start of the conversation, Walton stated that it had been a tough election and that he was replacing Nance. When Nance asked, "You mean I'm through, I'm no longer employed with Sims?" Walton answered, "You're through. You can put your name on the out of work list on your way out." During the course of this conversation, Walton told Nance that he was being replaced by Don Moylan. Nance then left Walton's office and prior to leaving the union hall signed the out-of-work list.

The following day he arrived for work at 7 a.m. Moylan was already there talking to the men. Nance went into the office and sat there waiting for Moylan who did not come into the office until about 8. When Moylan asked Nance what he was waiting for, Nance responded that Moylan could go ahead and turn Nance's time in and get him his money. Moylan then went to the office and had the secretary prepare Nance's final check and layoff slip. When the secretary asked Moylan what reason she was to put down for Nance's leaving, Moylan answered by telling her merely that "Dennis Walton had said so."

2. Respondent's evidence

Walton testified that he had two, not just one, meetings with Sims Sr. where the subject of Nance was discussed. Both took place at the union hall and both were at the request of Sims Sr. The first, and apparently the longest, of these two meetings, both of which were attended by Walton's assistant, Joe Gagne, took place just a few days after the August 14 election. Sims Sr. started the meeting by indicating that he wanted to have a good relationship with Respondent and wanted to have peace. Sims Sr. explained that he wanted to get the other lawsuits and litigation involving the trusts out of the way

and that he hoped that this would be a good start.⁸ Sims Sr. then commented that his Company had gotten involved in the middle of the union election and had been compromised as a result of bumper stickers being placed on all his equipment. Sims Sr. added that it had been his instructions to Branch Manager O'Duggan to avoid involving the Company in partisan politics, but that Nance's activities had, nonetheless, placed them in an awkward position.

At this point Walton, after first indicating that he was receptive to Sims' offer of the olive branch, indicated that he was not satisfied with Nance's conduct as craft foreman on several different grounds. First, Walton informed Sims Sr. that Nance had previously operated his own trucking company and although not a signatory to the union contract had nonetheless accepted money for an apprenticeship program. Walton explained that this practice allegedly violated the Landrum Griffin Act and, as a result thereof, Nance was forced to resign from his trusteeship position to which he was elected in 1980. Next Walton indicated that he had received complaints from several of Sims employees during the election campaign that Nance was harassing them and discriminating against them by laying them off. Walton noted that these items added to his general dissatisfaction with Nance. Sims Sr. after hearing Walton's comments, observed that he did not want that type of person in a supervisory capacity. Sims Sr. further stated that he intended to fire Branch Manager O'Duggan within a few weeks and that he wanted to delay action on replacing Nance until he had an opportunity to hire a new branch manager.

According to Walton's somewhat disjointed testimony, he met with Sims Sr. for a second occasion on the morning in September about 2 weeks after the first meeting. During this conversation, Walton submitted to Sims Sr. the name of Don Moylan as a replacement for Nance. Sims Sr. indicated that he knew of Moylan who had been out of work after being laid off from Walton's brother's company and that he was acceptable to Sims. Sims Sr. added that all Sims wanted was to have a good relationship with Respondent. Sims Sr. told Walton that he would take care of informing Sims Jr. and Kolleda of this decision prior to Walton's meeting that afternoon with the two.

Walton's account of the afternoon meeting with Sims Jr. and Kolleda was brief and incomplete. According to Walton, he merely informed the two that Nance was being replaced and that, despite Kolleda's protestations, the matter already had been decided on and approved by Sims Sr. Walton denied ever telling either Sims Jr. or Kolleda at this or any other time that Nance was being replaced because of his "political philosophy."

Walton's account of his subsequent meeting with Nance is, not surprisingly, at variance with Nance's account as to most material respects. Walton testified that at the start of the conversation he simply told Nance that he had already discussed the matter and gone over the reasons with Sims Sr. for Nance's being replaced. Walton then told Nance that neither Respondent nor Sims had any objection to his staying on as a crane operator.

Nance indicated that he was not interested in staying on as a crane operator and that he was disappointed with Sims for their failure to back him up on his removal. Nance added that he was going to take time off and go north and run his trucking company. Walton then told Nance to sign the out-of-work list before Nance left the union hall. Walton specifically denied ever telling Nance that he was being removed for political reasons.

Joe Gagne, who was present at both of Walton's conversations with Sims Sr. as well as the Walton meeting with Sims Jr., and Kolleda, did not testify. No explanation was offered as to why he was not called as a witness by Respondent to corroborate Walton's testimony.

Moylan testified that several days before he was to commence work as Sims' new craft foreman he had a meeting at the union hall with Burt Kolleda and Walton. During the course of this meeting, Kolleda allegedly asked him what he was going to do with Nance. Moylan answered that it was not up to him that it was up to Kolleda. Kolleda then asked Moylan if Nance could operate a crane and that Moylan replied that he was a good crane operator. Kolleda then said, "Well, put him on a crane then." Neither Kolleda nor Walton was questioned regarding this conversation.

Moylan further testified that when he reported to the Sims' yard to commence employment as craft foreman, Nance was already there waiting in the office. When Nance asked him what Moylan was going to do Moylan answered that he was going to be the new craft foreman. Nance responded, "What am I to do?" Moylan replied that he could operate a crane if he wanted to. Nance did not respond but instead just walked away. Moylan specifically denied telling Nance that he was being terminated from his employment.

3. Walton's November 15 letter

Sometime shortly following his removal, Nance wrote to General President Turner of the International Union of Operating Engineers to protest Respondent's actions. General President Turner requested a response from Walton and on November 15 Walton submitted to Turner the following letter:

On July 8, 1982, I had occasion to speak to Mr. Terry O'Duggan. Mr. O'Duggan was the manager for Sims Crane Service in South Florida. He advised me that on several occasions, he had warned Mr. Nance about his position in the election and not to intimidate any employees under his supervision as a result of his own personal philosophies. Mr. O'Duggan stated that Nance continued to insist on asserting himself to the operating engineers in this company by placing bumper stickers and slogans on all cranes and vehicles owned by Sims' Crane Service. It was Mr. O'Duggan's specific statement that Sims did not wish to get involved in the middle of a union election and that he felt that Huey Nance was placing them in precisely that posture. *He requested that Mr. Nance be replaced immediately subsequent to the election.* [Emphasis added.]

⁸ There was no explanation as to what these other lawsuits were about.

I also had been contacted immediately after the nominations by several operating engineers employed by Sims. Brothers Terry Lewis, George Danielides, Jose Arechavaleta, and John Lewis met with me and requested my assistance in that pressure was being directly applied to them by Nance who was attempting to force them to display bumper stickers adverse to my administration. *These operators refused to comply with his requests and they stated they were being discriminated against as a result of their position in the election. Mr. O'Duggan requested that Nance be transferred pursuant to Article VII, Section 9 of the contract in order to avoid further conflict with the operating engineers employed by his company.* [Emphasis added.]

It is obvious to me that Brother Nance was disturbed with me in relation to another matter that had previously taken place in August of 1981. I had discovered that he owned a trucking company that was hauling boom for Sims, as well as other employers, without benefit of having a signed agreement with the Local Union. After investigation of the matter, I had a meeting with Nance and advised him that he would have to relinquish his position on the Executive Board or sell his company. Brother Nance chose to resign from the Executive Board. I have enclosed the information on this matter for your edification.

Subsequent to the election, I spoke directly with Mr. Tommy Sims, Sr. in relation to the Nance situation. Mr. Sims stated emphatically that his specific instructions were that none of his cranes or vehicles were to display bumper stickers or slogans promoting either party in the union election. He advised me that he had instructed his manager, Mr. Terry O'Duggan in this matter, and that he now felt that as a result of Nance's partisan politics, his company had been compromised. I informed Mr. Sims of the allegations of some of his employees in relation to Brother Nance's intimidation of them subsequent to which both Mr. Sims and myself agreed that it would not be proper for Nance to continue to be employed in that capacity.

On September 24, 1982, I informed Brother Nance of my findings in this matter and my decision, such decision being to relieve him of his foreman's duties in light of the facts that had surfaced. Sims extended to Nance the opportunity for employment in a position other than Craft Foreman. However, Nance declined stating that he intended to run his trucking business in northern Florida.

Paragraphs one and two of this letter raise certain matters which when viewed in contrast to Walton's own testimony before me, as well as the entire record, severely test his credibility.

Despite Walton's clear reference in paragraph one of his letter to O'Duggan's making a request to him that Nance be replaced immediately subsequent to the election and his subsequent reference in paragraph two to O'Duggan's requesting that Nance be transferred during the election campaign, I am unable to find any support

for either of these statements in the record. In his testimony before me, Walton specifically retracted these references and explained that, with regard to the first, O'Duggan merely stated that Nance's removal was a decision that would be made by Sims Sr. and that, with respect to the second, that sentence should have read "Mr. Sims" instead of O'Duggan. Walton did not explain how either Sims could have made any such request to him during the campaign when the record indicates that Walton had no communication with either Sims prior to the election. Moreover, it seems abundantly clear that, if either Sims had made that type of request to him during the campaign, it would have received an enthusiastic welcome and immediate favorable action on his part.

Walton did testify at hearing as to one rather significant conversation he had with O'Duggan during the campaign. On this occasion, O'Duggan allegedly told him that Sims had directed him to pass a thousand dollars on to Nance for use in Chandler's campaign. While O'Duggan was not specifically asked about this conversation, I note that Walton apparently never notified any governmental agency regarding this report which, if substantiated, would clearly constitute a violation of Federal law. Moreover, this report was never mentioned by Walton in his various frank and open conversations with representatives of Sims or in his letter to Turner. I find this implausible.

Paragraph two of Walton's letter recites that four employees of Sims complained to him about Nance's activities during the election campaign and further accuses Nance of discriminating against them because they refused to comply with his request to display Chandler bumper stickers. Other than in allegedly making a passing reference to this in his first conversation with Sims Sr., Walton did not testify regarding any conversations he had with any employees/members during the union campaign. Respondent did call one of the four mentioned employees/members, John Lewis, as a witness. Lewis testified that on the day following the union nominations he arrived at the Sims' Pompano Beach yard with his truck covered in Walton's stickers. Huey Nance walked over to his truck and ripped off the Walton stickers. When Lewis protested stating that Nance had Chandler stickers pasted all over the equipment, toolboxes, toilets, and everywhere else, Nance merely responded that he would not permit Lewis to have Walton stickers on his own truck. Lewis testified that while Nance continued to campaign during the election by speaking to employees and attempting to convince them to vote for his slate, he did not observe Nance on any other occasions remove Walton stickers from his or anyone else's truck and replace them with Chandler stickers. Lewis did testify that during the campaign he went to the union hall and complained to Walton about the Chandler bumper stickers placed throughout Sims' yard. On that occasion, Walton responded by stating that there was nothing he could do about it, that it was merely campaign time, and that Lewis should "just hang in there." Lewis further testified that on at least one occasion he complained to O'Duggan regarding the campaign stickers. O'Duggan told him there was nothing he could do about it.

O'Duggan testified that no employee of Sims complained to him specifically about Nance harassing them during the union campaign and he had no such knowledge of any harassment or discrimination practiced by Nance. Nance, for his part, denied ever putting Chandler stickers on Lewis' or any other Walton supporter's trucks or vehicles during the union campaign.

No evidence whatsoever was offered with regard to the allegation that Nance, in any way, discriminated against Lewis or the other three employee members named in the paragraph two of Walton's letter. In fact, at least Lewis and two of the other three of these named employees did not work directly under Nance and Nance did not and could not have controlled any of their working conditions.

Conclusions

The testimony of the four major witnesses called by the General Counsel, Thomas Sims Sr., Thomas Sims Jr., Burt Kolleda, and Huey Nance, was in all material respects both internally consistent and mutually corroborative. This testimony was both specific and detailed. With the exception of Nance's limited denial that he replaced Chandler bumper stickers on John Lewis' truck at the beginning of the campaign, each appeared to be testifying in an open, complete, and honest fashion. Moreover, in crediting their accounts, I particularly note that Sims has no stake in this litigation and, therefore, its officials have no apparent reason to intentionally fabricate their testimony to Respondent's detriment.

Walton's testimony, on the other hand, was not nearly so impressive. Glaring inconsistencies appear between his account given before me and his account supplied to the International general president less than 2 months after the events in question. Without belaboring this point, I merely note that despite the clear statement in the apparently carefully drawn letter, no evidence was offered to support his assertions that either any member of management requested Nance's transfer during the campaign or that Nance, as a supervisor, discriminated against any employees who opposed Nance's position in the election. In this latter regard I note that Nance was not even the supervisor of at least three of the four employees named in that letter.

Respondent had the opportunity to call Joe Gagne, the assistant manager, both then and now, to corroborate Walton's testimony that he did not inform Sims management that he was replacing Nance's craft foreman because of his political philosophy. Without explanation Respondent did not call Gagne as a witness. In these circumstances I infer that Gagne's testimony would not have been favorable to Respondent if in fact he had testified.⁹

Finally, I specifically do not credit Moylan's testimony that first he received permission from Kolleda to retain Nance as an operating engineer and second that he made just such an offer to Nance on the morning of September 24. This testimony, which is unsupported by any reliable evidence, is specifically denied by Nance. I find Moylan's testimony on these points to be convenient and self-

serving afterthoughts and instead I chose to credit, in full, Nance's account of his brief encounter with Moylan.

Having resolved all credibility issues, I now turn to an examination of whether these actions fall within the purview of Section 8(b)(1)(B) of the Act.

The General Counsel contends that Nance was at all times a supervisor within the meaning of the Act. Despite the positions set forth in its answer and taken at hearing, Respondent, on brief, readily concedes the point. The record clearly and overwhelmingly establishes Nance's supervisory status. Nance, who received a dollar an hour more than the highest paid member of the bargaining unit under his supervision, operated no equipment himself. He had broad independent authority which he regularly exercised to "name" request employees from the hiring hall, select particular employees for economic layoff, and assign employees based on his evaluation of their skill to particular pieces of equipment at different locations. Accordingly, I find, in agreement with the parties, Nance to have been a supervisor within the meaning of Section 2(11) of the Act.

Respondent contends that, despite Nance's supervisory status, his lack of authority to either negotiate or to adjust grievances on behalf of Sims does not confer on him the status of employer representative under Section 8(b)(1)(B). I find this argument to be without merit. As set forth, *supra*, Nance exercised the authority to adjust grievances in the working conditions of employees working under him. Admittedly these "grievances" were oral in nature and could best be described as minor employee problems in a grievance stage. However, as Administrative Law Judge Left observed in *Typographical Union 101 (Washington Post)*, 207 NLRB 841, 847 (1973):

The fact that the grievances with which she dealt were relatively minor can be of no controlling significance. The employer's bargaining obligation under the Act is as much applicable to minor employee grievances as to major ones. So, too, is management's need for representation in their consideration and adjustment.¹⁰

Here, Walton, Respondent's chief executive officer, informed members of Sims' management that he was removing Nance from his position as craft foreman. When they protested this action by indicating that they were entirely satisfied with Nance's performance, Walton responded that Sims' satisfaction was unimportant and that he and he alone would make the decisions on who could serve as craft foreman. In these conversations Walton made no attempt to disguise his reason for making this change—Nance did not share his own "political philosophy." No explanation of this statement was sought. It was clear to all that Nance was being punished for his active opposition to Walton's reelection. While there was no reference to Nance's staying on as a crane operator in these conversa-

¹⁰ See also *Iron Workers Local 46 (Cement League)*, 259 NLRB 70, 76 (1981); *Typographical Union 529 (Hour Publishing)*, 241 NLRB 310, 315 (1979).

⁹ *Martin Luther King, Sr. Nursing Center*, 231 NLRB 15 fn. 1 (1977).

tions with Sims' management, Walton did, according to Nance's credited account, make it clear to Nance that Nance's employment with Sims was terminated. Moylan's brief discussion with Nance at the Sims' yard on the morning of September 24 did not change this perception. In any event, Nance was well aware that there were no job openings for crane operators at Sims. Thus, on being informed by Walton that he was being replaced as craft foreman, Nance signed the Union's out-of-work list.

The Supreme Court in *Florida Power & Light Co. v. Electrical Workers IBEW Local 641*, 417 U.S. 790, 804-805 (1974), found that a union's discipline of a member who also serves as an employer's representative within the meaning of Section 8(b)(1)(B) violates that section only when it "may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or a collective bargainer on behalf of the employer." It is difficult to imagine how a union's discipline could have a more adverse effect on a particular supervisor's conduct than the total removal of that supervisor from the work force. Respondent's dictating to Sims who it could and could not employ as craft foreman constitutes an unwarranted and unlawful intrusion on an employer's concerns specifically protected by Section 8(b)(1)(B).¹¹

The General Counsel further alleges that Nance's removal by Respondent because he had engaged in protected activities coercively impacted on all unit employees by causing them to fear similar retaliation for engaging in infra Section 7 activity and, as such, violated Section 8(b)(1)(A). In advancing this argument the General Counsel relies on two recent cases *Iron Workers Local 46*, supra, and *ITO Corp. of Rhode Island*, 246 NLRB 810 (1979). Both of those cases hold that a respondent union's discipline of supervisors/members created an impact on other employees, the natural consequence of which was to restrain and coerce them with respect to their Section 7 rights in violation of Section 8(b)(1)(A). These cases, as well as those relied on therein by the Board as precedent for such conclusions are factually distinguishable from the situation presented here.¹²

In each of those cases the union's actions against the supervisor/member, as well as the reason for taking such underlying action were well publicized to nonsupervisory employees. The opposite is true here. Walton neither consulted with nor communicated his decision to replace Nance to nonsupervisory employees. Based on this record, it appears that all Sims' operating engineer employees knew was that on one day Nance was their craft foreman and that on the next Moylan held that position. Absent such knowledge or awareness on the employees'

part, the impact argument must fail. Accordingly, I recommend this allegation be dismissed.¹³

CONCLUSIONS OF LAW

1. Sims is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By removing Huey E. Nance about September 24, 1982, from the position of craft foreman for Sims, Respondent restrained and coerced Sims in the selection and retention of its representative for the purpose of collective bargaining and the adjustment of grievances and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. Respondent has not engaged in any other unfair labor practice not specifically found herein.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes of the Act, including the posting of an appropriate notice.

Having found that Respondent was responsible for the unlawful removal of Nance from the position of craft foreman, I recommend that Respondent be ordered to notify Sims in writing that it does not object to Nance's reinstatement as craft foreman or his employment in any other supervisory position and that it will not coerce or restrain Sims to remove him from such position. It is further recommended that Respondent be ordered to make Nance whole for any loss of earnings he may have suffered by reason of his unlawful removal from the craft foreman position.¹⁴

Contrary to the General Counsel's contention, I do not find that a broad order is warranted because there has been no showing that Respondent has a proclivity to violate the Act nor is the misconduct so egregious or widespread as to demonstrate a general disregard for its members' fundamental statutory rights. See *Hickmott Foods*, 242 NLRB 1357 (1979).

[Recommended Order omitted from publication.]

¹³ In view of this conclusion, I do not reach Respondent's argument advanced on brief that, by analogy, the "impact" holdings of those cases referred to above do not survive the Board's recent decision in *Parker-Robb Chevrolet*, 262 NLRB 402 (1982), in which the Board concluded that the discharge of a statutory supervisor under an "integral part or pattern of conduct" theory no longer is deemed to unlawfully interfere and adversely impact upon the exercise of employees' Sec. 7 rights.

¹⁴ Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest thereon as set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

¹¹ *Metallic Leathers Local 46*, supra.

¹² *Stage Employees IATSE Local 659 (Y-A Productions)*, 197 NLRB 1187 (1972); *Alberici-Fruin-Colon*, 226 NLRB 1315 (1976).